

**BEFORE THE BOARD OF DISCIPLINARY APPEALS  
APPOINTED BY  
THE SUPREME COURT OF TEXAS**



FILED  
Jan 8, 2024

THE BOARD of DISCIPLINARY APPEALS  
Appointed by the Supreme Court of Texas

**IN THE MATTER OF  
LONDON STEPHON KEATING  
STATE BAR CARD NO. 24086647**

§  
§  
§

**CAUSE NO. 68536**

---

**RESPONDENT’S PLEA TO THE JURISDICTION, AND IN THE ALTERNATIVE,  
ORIGINAL ANSWER TO THE COMMISSION FOR LAWYER DISCIPLINE’S  
PETITION FOR COMPULSORY DISCIPLINE**

---

**TO THE BOARD OF DISCIPLINARY APPEALS:**

COMES NOW Respondent, Landon Stephon Keating (“Respondent”) and files this Plea to the Jurisdiction and in the alternative, Original Answer to the Commission for Lawyer Discipline’s (“Petitioner” or “CFLD”) Petition for Compulsory Discipline, and would respectfully show the Board of Disciplinary Appeals (“BODA”) the following:

**I. PLEA TO THE JURISDICTION**

1. Respondent denies that BODA has jurisdiction over this matter pursuant to Rule 6.01 of the BODA Internal Procedural Rules. Specifically, Respondent was not convicted of an “Intentional Crime” or a “Serious Crime” as those terms are defined in Rules 1.06(V) and 1.06(GG) of the Texas Rules of Disciplinary Procedure, BODA lacks jurisdiction to issue compulsory discipline and the CFLD’s Petition for Compulsory Discipline must be dismissed.

**II. ARGUMENT**

2. BODA does not have jurisdiction to hear a compulsory discipline action against Respondent. First, Respondent plead guilty to the felony offense of Invasive Visual Recording, which is not a “Serious Crime” or “Intentional Crime” as defined by the Texas Rules of Disciplinary Procedure. Moreover, invasive visual recording is not a crime of moral turpitude *per*

*se.* Accordingly, because Respondent was not convicted of an Intentional Crime or Serious Crime, compulsory discipline is improper, and BODA lacks jurisdiction to discipline Respondent.

**A. INVASIVE VISUAL RECORDING IS NOT A CRIME OF MORAL TURPITUDE *PER SE*.**

3. For compulsory discipline, Respondent must have been convicted of an “Intentional Crime,” which requires that the attorney commit “(1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.” TEX. R. DISCIPLINARY P. 1.06(V). Pursuant to Rule 1.06(GG), “Serious Crime” is defined as:

Barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

*Id.* at 1.06(GG).

4. Invasive visual recording is not barratry, nor is it a misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property. Consequently, for invasive visual recording to constitute a “Serious Crime,” it must either be (1) a felony involving moral turpitude or (2) that Respondent conspired or solicited another to commit a felony involving moral turpitude.

5. As previously mentioned, Respondent plead guilty to the felony offense of Invasive Visual Recording. Thereafter, the Court ordered that Defendant be placed on deferred adjudication community supervision without an adjudication of guilt. Again, “Serious Crime” is defined as “any felony *involving moral turpitude.*” *Id.* (emphasis added). As detailed further below, invasive visual recording does not constitute a crime of moral turpitude *per se*.

6. Whether a particular crime involves moral turpitude is a question of law. *See In re Thacker*, 881 S.W.2d 307, 309 (Tex. 1994); *State Bar of Tex. v. Heard*, 603 S.W.2d 829, 835 (Tex.

1980). “[T]o determine whether a crime is an Intentional Crime, thus permitting the Bar to pursue the compulsory discipline process, [the Supreme Court] look[s] solely to the elements of the crime, and not to any collateral matters, such as an attorney’s record of service and achievement, or to the underlying facts of the criminal case.” *In re Lock*, 54 S.W.3d 305 (Tex. 2001) (citing *Duncan v. Board of Disciplinary Appeals*, 898 S.W.2d 759, 762 (Tex. 1995)).

7. Moreover, within the context of attorney discipline, the Supreme Court has consistently held that “crimes of moral turpitude must involve dishonesty, fraud, deceit, misrepresentation, or deliberate violence, or must reflect adversely on an attorney’s honesty, trustworthiness, or fitness as an attorney.” *Id.* at 308 (citations omitted). Therefore, pursuant to the Supreme Court’s analysis, BODA is to “look solely at the elements of [Respondent’s] crime to determine if those elements involve the kinds of acts or characteristics encompassed within our definition of moral turpitude.” *Id.*

8. In *In re Lock*, the Supreme Court of Texas set forth the controlling analysis for a case like the one at bar. There, the Court considered whether the possession of cocaine—which is a felony offense—was an “Intentional Crime” and, more specifically, whether it was a crime involving moral turpitude. In its guiding analysis, the Texas Supreme Court first noted the elements for the offense of possession of cocaine: “[t]he elements of the applicable criminal statute are that the defendant knowingly or intentionally possessed a controlled substance listed in Texas Health & Safety Code § 481.102.” (citing TEX. HEALTH & SAFETY CODE § 481.115(a)). The Court then reasoned that, “[b]ecause the elements of this crime do not involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or reflect adversely on an attorney’s honesty or trustworthiness, to fall under our definition of moral turpitude, possession of cocaine must reflect adversely on a lawyer’s fitness generally.” *Id.*

9. As the comments to Rule 8.04 of the American Bar Association’s Model Rules of Professional Conduct states: “Many kinds of illegal conduct reflect adversely on fitness to practice law.... However, some kinds of offense carry no implication.... Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable ***only for offenses that indicate lack of those characteristics relevant to law practice.***” TEX. DISCIPLINARY R. PROF’L. CONDUCT 8.04 cmts. (emphasis added). The Texas Supreme Court succinctly summarized the comments when it stated that “not all crimes implicate fitness to practice law.” *Lock*, 54 S.W.3d at 308.

10. The foregoing comments raise the question of what crimes do, and what crimes do not, implicate fitness to practice law? The Texas Disciplinary Rules of Professional Conduct define “fitness” as:

Denotes those qualities of physical, mental, and psychological health that enable a person to discharge a lawyer’s responsibilities to clients in conformity with the Texas Disciplinary Rules of Professional Conduct. Normally a lack of fitness is indicated most clearly by a persistent inability to discharge, or unreliability in carrying out, significant obligations.

TEX. DISCIPLINARY R. PROF’L CONDUCT terminology; *see also Lock*, 54 S.W.3d at 308-09. As the Texas Supreme Court stated in *Lock*, “[t]his definition of fitness plainly contemplates that some review of particular facts or a course of conduct may be necessary before one can conclude that an attorney should be professionally answerable for a particular offense or pattern of offenses.” *Lock*, 54 S.W.3d at 309. As a result, the Texas Supreme Court noted, “[w]e simply cannot determine whether an attorney’s conduct reveals a persistent inability to discharge, or unreliability in carrying out, significant obligations’ without looking to the facts of the case.” *Id.* (citations omitted). Ultimately, the Texas Supreme Court would go on to conclude:

We recognize that possession of a controlled substance may adversely affect a lawyer’s ability to practice honestly and effectively. However, keeping in mind the aspects of fitness to practice highlighted above, and the fact that we determine if a crime is one of moral turpitude by looking solely to the elements of the offense, we cannot say that the elements of Lock’s offense mandate the legal conclusion that ***every attorney guilty of that offense is categorically unfit to practice law***...Because we would need to examine the circumstances surrounding Lock’s possession of a controlled substance to determine if she were unfit to practice law, ***which we are prohibited from doing under the compulsory discipline rules***, we cannot conclude that possession of a controlled substance is a crime of moral turpitude per se.”

*Id.* at 309, 3011 (emphasis added).

11. The Texas Supreme Court’s analysis laid out in *Lock* is controlling on the question of whether the crime at issue here, invasive visual recording, has an inherently adverse effect on a lawyer’s ability to practice law honestly and effectively, regardless of the underlying facts.

Accordingly, we first look to the elements of invasive visual recording:

- (b) A person commits an offense if, without the other person’s consent and with intent to invade the privacy of the other person, the person:
  - (1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view;
  - (2) photograph or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room; or
  - (3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

TEX. PENAL CODE § 21.15. As with the elements of the offense at issue in *Lock* – possession of cocaine—the elements of invasive visual recording do not involve dishonesty, fraud, deceit, misrepresentation, deliberate violence, or reflect adversely on an attorney’s honesty or trustworthiness. *See Id.* Therefore, to fall under the definition of a crime involving moral turpitude, invasive visual recording must reflect adversely on a lawyer’s fitness inherently or categorically.

12. While the offense of invasive visual recording may reflect adversely on some attorneys' fitness, it does not reflect adversely on *every* attorney's fitness. Consequently, like possession of cocaine, invasive visual recording does not categorically reflect adversely on an attorney's fitness to practice law.<sup>1</sup> Without looking into the facts underlying the criminal proceedings, as is prohibited in a compulsory disciplinary proceeding (as noted in *Lock*), it is impossible to know whether Respondent's charge of invasive visual recording represents a "*persistent inability*" to discharge, or unreliability in carrying out, significant obligations." See *Lock*, 54 S.W.3d at 309 (citing TEX. DISCIPLINARY R. PROF'L CONDUCT terminology) (emphasis added).

13. In other words, as in *Lock*, one cannot say that the elements of invasive visual recording mandate the legal conclusion that *every attorney guilty of that offense is categorically unfit to practice law*. *Id.* at 309. To determine whether an attorney guilty of invasive visual recording is unfit to practice law necessitates an examination of the circumstances and the individual attorney's fitness—which is expressly prohibited by the Texas Supreme Court in *Lock*. Consequently, because BODA would need to examine the circumstances surrounding Respondent's case and his fitness to practice law, BODA *cannot* conclude that the offense of invasive visual recording is a crime of moral turpitude *per se*. Accordingly, compulsory discipline is improper, and BODA does not have jurisdiction to address the CFLD's Petition for Compulsory Discipline.

---

<sup>1</sup> Similar to the crime of possession of cocaine in *Lock*, several other criminal offenses have been determined not to be crimes of moral turpitude. *Lock*, 54 S.W.3d 305 (Tex. 2001); see, e.g., *In re Humphreys*, 880 S.W.2d 402 (Tex. 1994) (tax evasion); *Duncan v. Bd. of Disciplinary Appeals*, 898 S.W.2d 759 (Tex. 1995) (misprison of felony); *Turton v. State Bar of Tex.*, 775 S.W.2d 712 (Tex. App.—San Antonio 1989, writ denied) ("Some crimes are not crimes which, *per se*, involve moral turpitude. We believe aggravated assault to be one of those.").

### **III. ANSWER**

Subject to the above Plea to the Jurisdiction, Respondent Landon Keating answers the CFLD's Petition for Compulsory Discipline as follows:

14. Paragraphs 1, 2, 13, and 15 of CFLD's Petition for Compulsory Discipline contain either arguments or legal conclusions to which no response from Respondent is required.

15. Respondent admits the allegations contained in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 14 of CFLD's Petition for Compulsory Discipline.

16. Respondent denies the allegations contained in Paragraphs 16 and 17 of the CFLD's Petition for Compulsory Discipline.

17. Respondent denies that he should be subject to any compulsory discipline action.

18. Respondent denies that Petitioner is entitled to attorney's fees or costs associated with this disciplinary proceeding.

### **IV. DEFENSES**

Subject to the above Plea to the Jurisdiction, Respondent Landon Keating asserts the following defenses to the allegations in the CFLD's Petition for Compulsory Discipline.

19. The Petition for Compulsory Discipline should be dismissed or denied because there is no jurisdiction for this compulsory discipline proceedings.

20. The Petition for Compulsory Discipline should be dismissed or denied because Respondent was not convicted of an "Intentional Crime" (as this term is defined in Rule 1.06(V) and 1.06(GG) of the Texas Rules of Disciplinary Procedure).

### **PRAYER**

Respondent Landon Keating asks that the Board of Disciplinary Appeals dismiss Petitioner's Petition for Compulsory Discipline in its entirety because it lacks jurisdiction to hear

a compulsory discipline proceeding based on the underlying allegations, or, in the alternative, to deny the relief sought in Petitioner's Petition for Compulsory Discipline; award Respondent all reasonable and necessary attorneys' fees and litigation expenses associated with this proceedings; and award Respondent all such other and further relief as the Board of Disciplinary Appeals deems just and equitable.

Respectfully submitted,

West, Webb, Allbritton & Gentry, P.C.  
1515 Emerald Plaza  
College Station, Texas 77845-1515  
Telephone: (979) 694-7000  
Facsimile: (979) 694-8000

By: /s/ Gaines West  
GAINES WEST  
State Bar No. 21197500  
Email: [gaines.west@westwebblaw.com](mailto:gaines.west@westwebblaw.com)  
HANNA LEE  
State Bar No. 24122232  
Email: [hanna.lee@westwebblaw.com](mailto:hanna.lee@westwebblaw.com)

*Attorneys for Respondent*

### **CERTIFICATE OF SERVICE**

This is to certify that the above and foregoing document has been delivered as indicated below to counsel of record on this 8th day of January 2024.

Seana Willing  
Chief Disciplinary Counsel

Amanda M. Kates  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O. box 12487, Capitol Station  
Austin, Texas 78711-2487  
*Attorneys for Petitioner*

*Via Email: [Amanda.kates@texasbar.com](mailto:Amanda.kates@texasbar.com)*

/s/ Gaines West  
GAINES WEST